HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT APPEAL No.408 of 2007

Between:

Sri Mala Chandraiah (died) per L.Rs.

... Appellants

AND

The Commissioner of Land Revenue,
Hyderabad and seven others.

... Respondents

; JUDGMENT :

Counsel for the appellants : Shri N. Ashok Kumar

Counsel for respondent Nos.1 to 4: Government Pleader for Revenue

Counsel for respondent Nos.5 to 8: Sri P. Jaganmohan Reddy for Sri A.Narasimha Reddy

Dated: 4th June, 2007

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Per C.V.NAGARJUNA REDDY, J.

This appeal is filed against order dated 12.12.2006 passed by the learned Single Judge, whereby he dismissed the writ petition filed by the appellants for quashing orders dated 10.02.1982 and 22.11.1995 passed by Revenue Divisional Officer, Narayanpet, Mahabubnagar District (respondent No.3) and Commissioner of Land Revenue, Andhra Pradesh, Hyderabad (respondent No.1) respectively.

Late Sri Mala Chandraiah, who shall hereinafter be referred to as 'the assignee' and is represented by his legal representatives i.e., respondent Nos.2 to 5, was assigned an extent of Ac.2.14 guntas of land in Survey No.110 of Hakimpet Village, Bomraspet Mandal in Mahaboobnagar District in the year 1980 out of the land declared surplus under the provisions of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (for short 'the Act'). By an order dated 10.02.1982, respondent No.3 cancelled the assignment. The appeal preferred by the assignee was dismissed by the District Revenue Officer, Mahaboobnagar. The further appeal preferred by him was dismissed by respondent No.1 vide his order dated 22.11.1995. He held that the assignee is not a resident of Hakimpet Village and, therefore, the assignment made in his favour is in violation of Rule 10 of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Rules, 1974, that at the time of assignment, the assignee owned land measuring Ac.4.25 guntas in Survey Nos.109 and 110 and, as such, he cannot be treated as landless poor person and that the assignee had failed to pay the instalment of premium.

Late Sri Mala Chandraiah challenged orders dated 10.02.1982

and 22.11.1995 in Writ Petition No.28167 of 1995, which was dismissed by the learned Single Judge.

A perusal of the record shows that the action for cancellation of the assignment made in favour of late Sri Mala Chandraiah was initiated on a complaint made by the villagers that he was not a landless poor person and that he was a resident of Sarjakhanpet Village and not of Hakimpet Village. In response to the notice issued by respondent No.3, the assignee stated that dry lands admeasuring Ac.2.15 cents and Ac.2.10 cents in Survey Nos.109 and 110 were purchased in his name from out of the joint family earnings. However, no material was produced by him to show that he is a resident of Hakimpet Village and not of Sarjakhanpet Village. Respondent No.3 cancelled the assignment by observing that the assignee was not the resident of the same village and that he had failed to pay the instalment of premium, which fell due on 01.03.1981.

The District Revenue Officer and Additional Magistrate, Mahaboobnagar, before whom the appeal was filed, dismissed the same by his order dated 19.05.1990. The concerned officer held that the assignee has failed to prove that he was landless person at the time of assignment and that he is a resident of Hakimpet Village in which the assigned land is situated.

While dismissing the second appeal preferred by the assignee, respondent No.1 observed that the assignee was not a resident of Hakimpet Village, that he had Ac.4.25 cents of land in Survey Nos.109 and 110 in his name and, therefore, he is not a landless poor person and that he did not pay the instalment of premium On the complaint given by some of the villagers, the respondents initiated the proceedings for cancellation of assignments made in favour of as many as seven persons including the assignee. The order dated 10.02.1982 passed by respondent No.3 shows that show cause

notices were issued to the assignees including Mala Chandraiah and the allegation against him was that he was having Acs.3.00 of land in Hakimpet village besides having some land in Sarjakhanpet village and that he was a resident of the said Sarjakhanpet village. The assignee in his explanation stated that dry lands admeasuring Acs.2.15 cents and Acs.2.10 cents in Sy.Nos.109 and 110 were purchased in his name from out of the joint family earnings. It is evident from the said order that the original assignees engaged their advocates and despite issue of notices on two occasions, they failed to appear and argue the cases. The 3rd respondent therefore cancelled the assignments vide his proceedings dated 10.02.1982. The main ground for cancellation was that the assignees were not the residents of the same village and that there was no evidence that they were in physical possession, cultivating the lands and they failed to pay the instalment of the premium amount, which fell due on 01.03.1981. The District Revenue Officer and Additional Magistrate, Mahaboobnagar, before whom the appeal was filed, dismissed the same by his order dated 19.05.1990. The District Revenue Officer in his order held that the assignee failed to prove that he was the landless person at the time of assignment and that he is not a resident of the Hakimpet village in which the assigned land is situate. He therefore held that there was no reason to interfere with the order passed by respondent No.3. Respondent No.1 who dismissed the second appeal filed by the assignee also laid emphasis in his order dated 22.11.1995 on the three grounds viz., that the assignee was not a resident of Hakimpet village, he had Acs.4.25 cents of land in Sy.Nos.109 and 110 in his name and therefore he is not a landless poor person and that he did not pay the instalment of premium, which fell due on 01.03.1981. He also held that though several chances were given to the assignee by respondent No.3 to produce evidence in support of his stand, he did not avail the opportunities given to him.

Sri N. Ashok Kumar, learned counsel for the appellants, contended that all the revenue authorities and the learned Single Judge committed a serious error in rejecting the plea of the appellants that the assignee was denied a reasonable opportunity. He submitted that though the assignee has engaged a counsel, the latter failed to appear and put-forth the case of the assignee before respondent No.3. He lamented that the assignee, who belongs to the Scheduled Caste community and was illiterate, was let down by his advocate.

Learned Government Pleader for Revenue and Sri P.Jaganmohan Reddy argued that since the assignee failed to avail the opportunities given to him, the impugned orders should not be nullified on the ground of violation of the rules of natural justice.

We have considered the respective submissions. In our considered view, the assignee did not get a reasonable opportunity to put-forth his case with respect to the three aspects viz., his nativity, whether he was a small farmer and whether he paid the premium amount. In his order, respondent No.3 clearly mentioned that all the assignees have engaged their counsel, but they failed to produce the evidence in support of the pleas advanced by their clients apart from not being present and arguing the cases. The assignee appears to be an illiterate villager and evidently he had to necessarily depend on his counsel, who, unfortunately, did not espouse his cause. Equity and justice, therefore, demand that a fair opportunity is afforded to him before denying him the land, which was given to him by way of an assignment. In our considered opinion, the District Revenue Officer, respondent No.1 and the learned Single Judge have committed a serious error by not considering the assignee's plea that he had been denied opportunity to substantiate his case.

In the result, the appeal is allowed. The order of the learned Single Judge and those impugned in the writ petition are set aside.

The matter is remitted to respondent No.3 for deciding the same afresh. He shall permit the appellants to adduce evidence in support of their contentions and, after considering the said evidence and hearing the parties he shall decide the issue as to whether the assignment of Ac.2.14 guntas of land made in favour of Mala Chandraiah in Survey No.110 of Bomraspet Mandal, Mahaboobnagar District was legal and valid or not. Till the adjudication of the matter by respondent No.3, there shall be status quo obtaining as on today with respect to the said land.

C.V. NAGARJUNA REDDY, J

G.S.SINGHVI, CJ

Date: 04.06.2007.
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